IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 6TH DECEMBER 2007 / 15TH AGRAHAYANA 1929

Crl.MC.No. 3657 of 2007()

AGAINST THE JUDGEMENT/ORDER IN CRRP.3614/2006
CRA.176/2006 of ADDL. SESSIONS COURT, ALAPPUZHA
C.C.NO.543/2003 OF J.F.C.M, AMBALAPUZHA

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PETITIONER: PETITIONER/APPELLANT/ACCUSED:

V.J. MICHAEL,
VADAKKE THAYYIL, KUTHIRAPANDY WARD, ALAPPUZHA-2.

BY ADV. SRI.BINOY VASUDEVAN
SRI.BINOY VASUDEVAN

RESPONDENTS: RESPONDENTS/COMPLAINANT/STATE:

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1. STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR,HIGH COURT OF KERALA
ERNAKULAM.

2. A.P. VARADARAJAN,
CHALLIYIL VEEDU, PUNNAPRA P.O., ALAPPUZHA.

BY ADV. SRI.MANSOOR.B.H.
PUBLIC PROSECUTOR SRI.M.S.BLAZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 06/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.3657 of 2007

Dated this the 6th day of December, 2007

O R D E R

Petitioner has been found guilty, convicted and sentenced in a prosecution under Section 138 of the Negotiable Instruments Act. The verdict of guilty, conviction and sentence have now become final with the disposal of the revision petition by Annexure-1 order. The petitioner now faces the sentence of imprisonment till rising of court and to pay an amount of Rs.85,000/- as compensation. In default of payment of fine, he has to undergo S.I for a period of 2 months.

2. According to the petitioner, the matter has been settled now. The complainant has entered appearance through counsel to confirm that the matter has been settled. The petitioner prays that the dictum in **Sabu George v. Home Secretary** [2007(1) K.L.T 982] may be invoked to set aside the sentence imposed on him.

3. It has time and again been repeated that **Sabu George v. Home Secretary** [2007(1) K.L.T 982] is not

authority for the proposition that in any and every case where there is post revision composition, such composition can be accepted and powers under Section 482 Cr.P.C can be invoked on the basis of such composition.

4. In the facts of that case, where the accused would have been obliged to undergo a long substantive sentence of imprisonment notwithstanding the composition, it was held that in view of the subsequent composition and considering the nature of the sentence which the accused will have to undergo, the powers under Section 482 Cr.P.C can be invoked to set aside the substantive sentence of imprisonment.

5. In the facts and circumstances of this case, I find no reason to invoke the extraordinary inherent jurisdiction under Section 482 Cr.P.C. The petitioner has to undergo only a sentence of imprisonment till rising of court. He has been directed to pay compensation and both the accused and the respondent/complainant assert before me that such payment has been made. This fact can be reported to the learned Magistrate. Once that is reported and the learned Magistrate is satisfied that

the compensation amount has been paid, there can be no question of the default sentence being executed against the petitioner. The position has been made crystal clear and the last trace of doubt if any on this point has been laid to rest by the decision in **Girish v. Muthoot Capital Service (P) Ltd.** [2007 (1) KLT 16)].

6. I do not, in these circumstances, find any reason to invoke the powers under Section 482 Cr.P.C. The petitioner and the complainant must report to the learned Magistrate the fact that the compensation amount has been paid, in which event, the petitioner can appear before the learned Magistrate and offer to undergo the sentence of imprisonment till rising of court. If the learned Magistrate is satisfied that the compensation amount has been paid, there can be no question of the default sentence being executed against the petitioner.

7. This Crl.M.C is dismissed with the above observations.

(R.BASANT, JUDGE)

rtr/-